IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7530 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARISHBHAI L LEUVA & 52 - Petitioner(s)

Versus

FOOD CORPORATION OF INDIA & 3 - Respondent(s)

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Appearance :

MR DJ BHATT for Petitioner(s) : 1 – 53.

GIRISH PATEL ASSOC for Petitioner(s) : 1 - 53.
MR YF MEHTA for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 31/08/2005

CAV JUDGMENT

1.By filing this petition under Article 226 of the Constitution of India, the petitioners are claiming

regular absorption – appointment in the services of the respondent authorities on the basis of the order passed by this Court in Special Civil Application No. 4667 of 1987 and on the basis of the finding recorded by the Tribunal as per the directions of the Apex Court. Further prayer is made to direct the respondent – corporation to pay regular salary and allowances as applicable to the post in question. It is also prayed to restrain the respondents, their agents and servants from appointing and/or recruiting any other persons as regular labourers on the vacant post in the Food Corporation of India depot till the final disposal of the petition.

2. It appears from the record that the Food Corporation of India Workers' Union had preferred Special Civil Application No.4667 of 1987. This Court (Coram : A.P.Ravani and J.U.Mehta,JJ) by order dated 05.12.1989 allowed the said petition. In the said judgment, the Court had observed as under :

> “However, in view of the inadequate and scanty material on record, it is not possible to give a declaration as to which workman has become direct employee of the respondent – Food Corporation of India. Therefore, it is directed that it will be

open to the petitioner – Union and/or for individual workman to make a representation to the respondent – Corporation within a period of sixty days from the date of this judgment i.e., on or before February 1, 1990 giving necessary details as regards the employment of the workman and the place at which he worked and under whom he worked and claimed necessary benefits. If and when such representation is made, the same will be decided by the respondent – Corporation within a period of sixty days from the date of receipt of the same in the light of the principles laid down and the observations made in the statement. In case, the decision is against the workman, the Court directs that the workman concerned or the petitioner union will be at liberty to move the appropriate authority under the relevant labour laws for redressing his grievance. The Court makes rule absolute to the aforesaid extent, with no order as to costs."

3. The aforesaid judgment was challenged by the Corporation before the Apex Court. The Apex Court, by its order dated 20.07.1990, directed that all the workmen pertaining to the 11 depots involved in this

litigation shall be taken back in the service by the petitioner – Corporation on regular basis, if they have not already been regularized under the directions of the High Court. The process of regularization be completed within a period of 4 weeks from the date of the order. The Apex Court further directed that the identification of such persons shall be made by the Central Government, Industrial Tribunal-cum-Labour Court No.1, Bombay after giving opportunity to both the parties to be heard and also hearing any other claimants who claimed to be one of such workmen who were working in the said 11 depots during the relevant time as directed in earlier order.

4. It appears from the record that, thereafter, the petitioners appeared before the Tribunal and they have been classified in Group 'E' as unattached workers and that out of 53 unattached workers, the Corporation had identified 46, although according to them, none had worked during the relevant period and the remaining 7 are not identified. The Tribunal okayed the claims of all these workers after considering identity card / wage slip in support of their claims. Thereafter, the Tribunal submitted its report to the Apex Court on 04.02.1991. The Apex Court passed the following order

on 20.04.1991 :

> “After hearing counsels of both the parties, we direct that 299 workers as mentioned in sub-paragraph (a) of the report by Mr.S.M.Khatri, Presiding Officer of Central Government, Industrial Tribunal No.1 who have been identified by the Corporation supervisory staff and found actually working be regularized immediately. As regards 109 workers mentioned in paragraph (b), who though not identified by any of the supervisors but have been found actually working during the material period between 20.01.1986 to 07.03.1987 be also regularized on proper scrutiny of the relevant documents as regards their identification.”

5. It is the case of the petitioners that there are other group of workers who were not identified nor were having any proof of working and in spite of that they are regularised and permanently absorbed in the service of Food Corporation of India, but unfortunately, the petitioners are not taken back in service and are not given permanent regular absorption / appointment. It appears from the record that as per the order of the Apex court dated 20.4.1991 the workers in Groups A and

B were regularized by the respondent Corporation in the month of August 1991 and since that date, the services of the present petitioners were terminated and at that point of time, it was orally told that the workers whose claim is recognized by the Tribunal will be absorbed and the petitioners having relied upon the oral promise, vacated the place. It is also the case of the petitioners that when the petitioners approached, they were time and again intimated that category-wise permanent absorption will be given. It is also the case of the petitioners that on the advise of respondent nos.3 and 4, the petitioners have waited till the decision of the Apex Court for C, D and E Groups. It is the case of the petitioners that when the personal approaches failed, the petitioners, thereafter made the representation dated 25.6.1997 to the respondent Corporation. It is also the case of the petitioners that, in spite of the representation dated 25.6.1997, no reply was given, and, therefore, the petitioners issued the legal notice on 22.7.1997 and in reply to the said notice, the respondent Corporation stated that the petitioners are not entitled to get regular appointment and denied the claim of the petitioners. In this view of the matter, the

petitioners have approached this Court by filing the present petition under Article 226 of the Constitution of India.

6.Heard the learned advocates for the parties.

7.This Court (Coram : H.L.Gokhale, J) vide order dated 23.10.1997 has passed the order which reads as under :

> “Heard Mr.Bhatt for the petitioner. He has tendered in a draft amendment. Leave to amend in terms of the draft amendment. Amendment to be carried out on or before 24.10.1997. Issue notice to the respondents returnable on 24.11.1997. In the meanwhile and until further orders, there will be ad-interim relief in terms of prayer clause 16(b) which will be subject to the rider that if the respondents want to engage the petitioners, they will be at liberty to do so. DS is permitted to respondents nos. 3 & 4.”

8.Thereafter, this Court (Coram : H.K.Rathod, J), by order dated 10.11.2003 has admitted the matter and thereafter the matter is adjourned time and again.

9.The respondents have opposed this petition by filing the affidavit-in-reply.

10.As narrated hereinbefore, the Presiding Officer of C.G.Industrial Tribunal No. 1, Bombay submitted his

report to the Apex Court in C.A.No.3490(N.L.) of 1990, Food Corporation of India V/s Food Corporation of India Workers' Union. In the said report, in para 13, it is observed that the Corporation has nothing to say one way or other. In the said para, it is further observed that “in my opinion, this direction expressly covers workers who are not members of the Union, provided they had worked under one of the 11 depots during the relevant period. It is agreed between the parties that the relevant period is 28.01.1986 to 07.03.1987. The Tribunal further observed in para 20 of the said report that “as regards the other group of 53 unattached workers, the Corporation has identified 46, although according to them, none had worked during the relevant period. The remaining 7 are not identified. All have filed Identity Card / Wage Slip in support of their claims. I am accordingly okaying the claims of all these workers.”

11. It is required to be noted that the Tribunal had okayed the claims of these petitioners after verifying Identity Card / Wage Slip in support of their claims and even these claims have not been contested by the Corporation, the eligibility thereof was upheld by the Tribunal. It is also required to be noted that out of

53 unattached workers, 46 workers have been identified by the Corporation and the remaining 7 are not identified.

12.It can, therefore, be seen that the petitioners have actually worked during the period which is relevant i.e. 28.01.1986 to 07.03.1987 as per the finding recorded by the Tribunal in its report and the petitioners are forming the group `E' and were found actually working on the site and it was also recorded by the Tribunal in its report that the Corporation has nothing to say one way or other.

13.Considering the facts and circumstances of the case, I am of the considered opinion that now the respondent – Corporation cannot go behind the finding recorded by the Tribunal and, therefore, the absorption which has not been made of the petitioners is ex-facie illegal. Since the petitioners are party to the identification process at Ahmedabad as per the order of the Apex Court and they were marked as Group `E' by the Tribunal in its report submitted to the Apex Court and in this view of the matter, the petitioners are entitled for regularization and permanent absorption with the Food Corporation of India. It is also required to be noted that as per the order of the Apex court dated 20.4.1991

the workers in Groups A and B were regularized by the respondent Corporation in the month of August 1991 and since that date, the services of the present petitioners were terminated and at that point of time, it was orally told that the workers whose claim is recognized by the Tribunal will be absorbed and the petitioners having relied upon the oral promise, vacated the place. Under the circumstances, the respondent Food Corporation of India is required to be directed to appoint the petitioners on the post of labourers as regular employees of Food Corporation of India and it is further directed to pay regular salary and allowances as applicable to the post.

14. In the result, the petition is allowed. Since as per the order of the Apex court dated 20.4.1991 the workers in Groups A and B were regularized by the respondent Corporation in the month of August 1991 and since that date, the services of the present petitioners were terminated and at that point of time, it was orally told that the workers whose claim is recognized by the Tribunal will be absorbed and the petitioners having relied upon the oral promise, vacated the place and further since no termination orders are produced on record by the respondent – Corporation, it is not the

termination of services of the petitioners in the eye of law. Under the circumstances, the respondent Food Corporation of India is directed to appoint the petitioners on the post of labourers as regular employees of Food Corporation of India and it is further directed to pay regular salary and allowances as applicable to the post. Rule is made absolute with no order as to costs.

(SHARAD D DAVE, J)

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